

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA POWER AGENCY,)	Case No. 11-1749 SC
)	Case No. 11-1806 SC
Plaintiff,)	
)	
v.)	<u>ORDER TO SHOW CAUSE</u>
)	
ALTAROCK ENERGY, INC.; and LLOYD'S)	
OF LONDON,)	
)	
Defendants.)	
)	

Defendant AltaRock Energy, Inc. ("AltaRock") has filed an Ex Parte Application to set aside the default entered by the Clerk of the Court on April 20, 2011 in Case Number 11-1749. ECF Nos. 18 ("Application"), 16 ("Entry of Def."). Plaintiff Northern California Power Agency ("NCPA") filed a Response in opposition to AltaRock's Application. ECF No. 22 ("Response").

As the following will show, it appears that both parties have more interest in using court proceedings for delay and gamesmanship rather than to resolve an actual dispute. As such, the Court wastes as little of its own time as possible in issuing this brief Order. It is not disputed that, prior to removal, AltaRock filed a petition in Case Number 11-1749 to compel arbitration. Under California Code of Civil Procedure § 1281.7, this petition serves as a responsive pleading. AltaRock subsequently removed the action to federal court. In violation of 28 U.S.C. § 1446, AltaRock

1 failed to attach this petition to its Notice of Removal. NCPA then
2 brought another action in state court -- Case Number 11-1806 --
3 challenging the removal of Case Number 11-1749. AltaRock removed
4 this action as well.

5 NCPA then filed an ex parte application in Case Number 11-1749
6 to stay arbitration between the parties that was scheduled to
7 commence on April 25, 2011. The Court denied this application, in
8 part due to its concern that it lacked subject matter jurisdiction
9 over the action. ECF No. 14. NCPA subsequently sought an Entry of
10 Default from the Clerk of the Court in Case Number 11-1749, citing
11 AltaRock's failure to file an answer within seven days of removal.
12 Because AltaRock had not attached its petition to compel
13 arbitration to the Notice of Removal, default was entered.

14 NCPA now argues in the arbitration proceedings -- currently
15 underway -- that the Entry of Default should require all issues at
16 arbitration to be adjudicated in NCPA's favor, save for damages.
17 McArthur Decl. Ex. A ("Gilbert Letter").¹ NCPA also argues that
18 the Court should deny AltaRock's Application as procedurally
19 improper. See Response.

20 Having reviewed the documents submitted, the Court ORDERS as
21 follows:

- 22 • The Court finds good cause to set aside the Entry of Default
23 in Case Number 11-1749, as setting aside default will not
24 prejudice NCPA. Accordingly, the Court ORDERS the Entry of
25 Default to be SET ASIDE.
- 26 • The Court finds Related Case Number 11-1806, filed by NCPA, to

27 ¹ Steven McArthur ("McArthur"), counsel for AltaRock, filed a
28 declaration in support of its Application. ECF No. 18-1.

1 be nothing more than an improper attempt to challenge
2 AltaRock's removal of the 11-1749 action in state court. It
3 is DISMISSED WITH PREJUDICE as duplicative of Case Number 11-
4 1749.

- 5 • Because it is seriously in question whether this Court has
6 subject matter jurisdiction over Case Number 11-1749, the
7 Court ORDERS Defendant AltaRock to show cause why this action
8 should not be dismissed for lack of subject matter
9 jurisdiction. A hearing is set for May 27, 2011, at 10:00
10 a.m., in Courtroom 1, 450 Golden Gate Avenue, San Francisco,
11 California. By May 8, 2011, AltaRock shall file a brief
12 addressing the issue of whether this Court has subject matter
13 jurisdiction. NCPA's Opposition is due May 15, 2011.
14 AltaRock's Reply is due May 22, 2011. All briefs shall
15 conform to this District's Civil Local Rules.
- 16 • The Court stresses that neither this Order, nor any other
17 order of the Court, serves to stay the arbitration proceedings
18 that are currently underway. No motions or applications will
19 be heard in this action until the issue of the Court's subject
20 matter jurisdiction is resolved.

21 The Court notices both parties that any action to further
22 delay or multiply proceedings, as well as any failure to comply
23 with this Order, will constitute sufficient grounds for sanctions.

24
25 IT IS SO ORDERED.

26 Dated: April 27, 2011


UNITED STATES DISTRICT JUDGE